

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's own motion into the operations, practices, and conduct of Starving Students, Inc. (Cal T-116,476), and Ethan Margalith, Abigail Margalith, Elizabeth Margalith and Sanford Margalith.

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ORDER INSTITUTING INVESTIGATION

I. INTRODUCTION

We issue this Order Instituting Investigation (OII) to determine whether Starving Students, Inc. (Starving Students) has violated the laws and regulations that govern household goods carriers. The Commission's Consumer Services Division (CSD) staff has prepared investigative reports and obtained declarations from 58 consumers documenting the allegations in this case. CSD staff's investigative reports allege that Starving Students under-reported its gross operating revenue to the Commission in order to under-pay license fees, and operated during periods of suspension for failure to have valid insurance in effect and on file with the Commission. Staff's reports and the consumer declarations also demonstrate that Starving Students has done the following: failed to timely acknowledge and process consumers' claims for lost, stolen or damaged goods; improperly denied consumers' claims for failure to note lost or damaged goods at the time of delivery; failed to properly supervise and train its employees resulting in untrained and unqualified workers; failed to properly supervise and manage its employees and facilities resulting in items being stolen while in the custody of Starving Students and/or its agents and employees; provided illegal verbal estimates; charged more than the

provided estimate; failed to provide the required “Not To Exceed Price” on shipping documents; failed to issue the “Important Information For Persons Moving Household Goods” booklet; arrived hours late or failed to provide scheduled moving services at all; failed to honor valuation options; and solicited tips, sometimes through extortion or intimidation.

II. COMPANY BACKGROUND

Starving Students is a licensed, statewide household goods carrier headquartered in Los Angeles, California, with 18 branch offices throughout the state. Starving Students also operates in Arizona, Colorado, Delaware, Maryland, Nevada, Texas, Virginia, Washington and Utah. Starving Students is incorporated in California, corporation # CO788718. According to documents obtained from Starving Students, Ethan Margalith owns 100% of the outstanding shares; Sanford Margalith (father), Elizabeth Margalith (mother), and Abigail Margalith (sister- married name, De Koster) each have 16 2/3% interest in Starving Students, subject to contractual terms. Mark Peers is its Chief Executive Officer.

The Commission granted operating authority to Starving Students in January of 1977, permit # Cal T-116,476. Starving Students of San Diego, Inc., permit # Cal T-147,142 was a licensee of Starving Students until October 2000. Since October 2000, the San Diego facility has operated as one of the branch offices of Starving Students.

On November 23rd, 1992, the Commission issued I.92-11-029 to investigate allegations of unlawful business practices by Starving Students, including failure to provide scheduled moving services, failure to provide competent and trained movers, and failure to respond to loss and damage claims. I.92-11-029 also alleged that Starving Students provided unlawful verbal estimates, misrepresented transportation and insurance charges, operated unsafe trucks, and unlawfully denied loss and damage claims because the customer did not note the damages at the time of delivery. On March 30th, 1993, Starving Students signed a settlement agreement with the Commission that mandated that Starving Students must do the following:

1. Be suspended 30 consecutive days to be completed no later than December 31, 1993.
2. Be placed on two-year probation.
3. Pay a \$100,000 fine.
4. Complete the settlement of the pending loss and damage claims.
5. Not knowingly operate any unsafe vehicles and shall institute a new program of vehicle repair and maintenance.
6. Not knowingly allow an unlicensed driver to operate any company vehicle.
7. Immediately enroll in the Department of Motor Vehicle' Pull Notice Program and shall forward the verification of enrollment certification to the CPUC's Transportation Division.
8. Conduct the business operations throughout their probation period in accordance with the Operational Plan formulated by Starving Student's Inc. and reviewed by the Transportation Division. The Operational Plan addresses a) corporate structure (b) yellow page advertisement (c) sales practices (d) documentation discrepancies (e) claims processing (f) employee recruiting and training (g) vehicle and equipment maintenance and (h) distribution of monthly status report to the CPUC.

On July 8th, 1993, the Los Angeles City Attorney filed a complaint against Starving Students in Los Angeles County Superior Court, case number BC084603, alleging violations of California Business and Professions Code sections 17200 et seq. and 17500 et seq. Along with the complaint, the Los Angeles City Attorney and Starving Students filed a stipulation whereby Starving Students agreed to be enjoined from doing any of the following:

1. Misrepresenting the rates or scope of services offered to the public.
2. Providing verbal estimates over the telephone prior to visual inspection of the goods to be moved.
3. Failing to acknowledge or process loss and damage claims in a timely manner.
4. Charging a surcharge not authorized by the Public Utilities Code.

5. Making any statements with the intent to induce customers to engage defendants' moving services, which they know or, by the exercise of reasonable care, should know are untrue or misleading.
6. Operating as a common carrier of household goods without complying with the conditions set by the Superior Court regarding restitution to customers who were charged a "surcharge" between June 1990 and November 1992.

Starving Students was required to pay a total of \$150,000; \$50,000 to pay the investigative costs of the Commission; \$20,000 to the Los Angeles City Attorney's Office in attorney's fees; and \$80,000 to the City of Los Angeles and the State of California.

The Washington Utilities and Transportation Commission (WUTC) investigated violations of consumer protection, safety, and economic regulations in 1999 and 2000. WUTC staff found non-compliance with rules governing household goods carriers, including 600 separate violations ranging from rate and tariff problems to safety record keeping violations. WUTC stated that Starving Students has a history of noncompliance with regulation and a history of promising but failing to deliver compliance. On September 13, 2000 the WUTC adopted a Settlement Agreement, Docket TV-000695, which imposed penalties and conditions on Starving Student's activities¹.

III. FACTUAL ALLEGATIONS

CSD staff began its investigation of Starving Students in May 2000. Staff reviewed documents and consumer complaints covering a three-year period, 1999 to

¹ The agreement directed Starving Students, Inc. to take the following actions, among other things: correct its earnings and underpayment of its 1999 Annual Fees, and re-file its 1999 Report; pay \$81,505.20 in penalties, and pay the costs of two future audits; restrict its expansion, with no new terminals or branches for 6 months without WUTC approval; conduct staff training on compliance with rules and regulations; ensure not to provide oral estimates, and to require accurate written estimates, customer information, and customer valuation choice; computerize its booking system, and make scheduling improvements to avoid booking moves when equipment or personnel are unavailable; provide

2001. Staff reviewed 233 complaints received by CSD and 81 complaints received by the Better Business Bureau. Staff obtained the Starving Students Claim Register, which identified 2,584 loss and damage claims from 1999 to 2001. Staff interviewed and obtained declarations from 58 consumers primarily from the Claim Register, documenting the consumers' experiences with Starving Students. Staff obtained and reviewed business records from Starving Students, including tax statements, revenue reports, claim files, and shipping documents. Staff's findings are described in its investigative reports.

The investigative report of CSD's Financial Examiner alleges that Starving Students knowingly and willfully made false statements of gross operating revenue in order to underpay the Commission's regulatory fees. The License Section of the Commission's Railroad Safety and Carrier Division, Carriers Branch determines the amount of regulatory fees owed based on the quarterly financial reports filed by carriers. Staff compared the gross operating revenue amounts from the Starving Students' quarterly reports to the gross operating revenue stated in Starving Students' annual financial reports, which are also filed with the Commission. Staff obtained Starving Students' Consolidated Financial Statements and Federal and California Income Tax Returns for Starving Students, Inc. prepared by an independent CPA firm, Gurse, Schneider & Co. LLP, for Starving Students. The California Income Tax Returns Schedule R-1 for 1998, 1999 and 2000 show discrepancies between the amount of intrastate revenue reported on the tax returns and the amount of intrastate revenue reported in Starving Students' quarterly revenue reports to the Commission. Staff's report alleges that Starving Students failed to include all of the revenue accounts relating to intrastate transportation of household goods in its quarterly reports. Staff alleges that the amount under-reported was as follows: for 1998, the amount of gross operating revenues under-reported was \$3,952,201; for 1999, the amount of gross operating

valuation options, and ensure all customers are offered all valuation options provided for in the tariff; keep a record of complaints and claims and company responses; implement a written safety program.

revenues under-reported was \$6,719,576; and for 2000, the amount of gross operating revenues under-reported was \$6,202,956.

Staff's report alleges that the License Section suspended Starving Students from October 1, 1999 through November 2, 1999, and from December 8 to December 9, 1999, for failure to have evidence of public liability and property damage insurance in effect and on file with the Commission. Staff's report also alleges that from August 31, 2000 through September 12, 2000, Starving Students was suspended for failure to have a Workers Compensation Insurance Certificate in effect and on file with the Commission. Staff's report includes Notices of Impending Suspension sent to Starving Students notifying it of the suspensions for each period of time, which include the following directive: "You are hereby directed not to operate unless and until your Commission operating authority is reinstated." Staff presents evidence that Starving Students completed moves during these periods; at least 25 moves from October 1 through November 2, 1999; at least 2 moves on December 8 and December 9, 1999; and at least 13 moves from August 31 through September 12, 2000.

CSD staff's review of the complaints received by CSD and the Better Business Bureau and the consumer declarations in this case demonstrate that Starving Students failed to acknowledge consumers' claims or failed to process their claims in a timely manner. Consumers report that Starving Students' customer representatives were not helpful, did not respond to their complaints, did not investigate the consumers' allegations, and often took many months to process and/or acknowledge their claims. Consumers also report that Starving Students denied their claims solely because the consumer failed to note the lost or damaged goods on the freight bill at the time of delivery.

Staff's evidence also demonstrates a pattern or practice by Starving Students of offering substantially less to settle consumer complaints than the amount claimed by the consumer. The Claim Register obtained from Starving Students and staff's investigative report demonstrate that in 1999 Starving Students received 1000 property

claims for a total of \$1,185,831.07, denied 326 of these claims, and offered \$192,669.17 (17% of the total claims); for 2000, Starving Students received 1112 property claims for a total of \$2,079,017.97, denied 259 of these claims, and offered \$279,107.32 (13%); and for 2001 (to July 2001), Starving Students received 475 property claims for a total of \$751,845.91, denied 128 of these claims, and offered \$65,114.89 (9%). Staff obtained declarations from these individuals, which revealed the frustration consumers suffered because Starving Students offered unreasonably low amounts or nothing at all, and refused to negotiate or consider proof of loss or damage, such as inspections or photographs, from the consumer.

CSD staff report that many consumers allege that their belongings were stolen while in the possession of Starving Students or its agents and employees. Of the 58 victims' declarations obtained by staff, 28 state that their property was stolen by Starving Students' employees. The evidence and declarations obtained by staff demonstrate that Starving Students' management often hired workers whom it knew to have felony convictions for theft, burglary, etc. CSD staff also allege that Starving Students failed to maintain adequate supervision over its storage facilities, resulting in theft of personal belongings from Starving Students' warehouses.

The consumer declarations demonstrate that Starving Students' movers exhibited unprofessional conduct, often appearing untrained and not in uniform. Consumers allege that the Starving Students workers' lack of training resulted in items being damaged and lost. Consumers report that Starving Students' workers' sometimes appeared rude, intoxicated, and actively solicited tips. Consumers report being intimidated by hostile Starving Students' employees, and feeling that the only way to avoid having items lost or stolen was to give the movers a tip immediately, sometimes before the workers had begun to move the consumers' goods.

CSD staff also allege that Starving Students provided verbal estimates over the telephone without a visual inspection of the goods; failed to provide the consumer with the "Important Information For Persons Moving Household Goods" booklet; failed

to provide consumers a “Not to Exceed Price” on their freight bill; failed to dispatch a vehicle of adequate size for the move; and failed to observe quoted rates and charges when charging customers a price higher than the verbal estimate.

Starving Students “Agreement for Services” contains three valuation options for lost or damaged goods: \$.60 per pound per article (free to the consumer), Actual Cash Value of the total amount declared, which includes depreciation (at additional expense to the consumer), and Full Cash Value, which includes replacement value (also at additional expense). Consumers allege that they paid for Actual Cash Value or Full Cash Value valuation options, but that Starving Students did not honor the chosen (and paid for) option but instead limited the consumer to \$.60 per pound per article. Consumers also allege that they were not given the opportunity to review the “Agreement for Services” and thus did not review and initial the valuation option.

Staff alleges that Starving Students failed to provide scheduled moving services in breach of the Agreement for Moving Services contract with the consumer. Staff alleges that Starving Students consistently overbooked scheduled moves, and thus failed to appear at the time scheduled by the consumer and agreed to by Starving Students. Consumers expressed frustration at having to wait hours or days for Starving Students movers to arrive, or having to cancel and make other arrangements, causing the consumer to incur unexpected expenses and loss of time. From evidence obtained by staff, Starving Students booked many more moves than it had the capacity to complete. Staff alleges that for 2000, in the East Bay, West Bay, San Diego, and Southern California regions, Starving Students booked 37,435 moves and completed 25,041 (67%). For 2001, in the East Bay, West Bay, San Diego, and Southern California regions, Starving Students booked 25,450 moves and completed 18,673 (73%).

IV. DISCUSSION

1. Jurisdiction

The California Public Utilities Commission is the agency responsible for regulation of intrastate transportation of used household goods, personal effects and

furniture pursuant to the California Constitution, (Article XII), the Household Goods Carriers Act (Public Utilities Code sections 5101, et seq.), the Commission's Maximum Rate Tariff 4 (MAX 4), and Commission General Orders (G.O.) 100-M, 136-C, 139-A, 142, and others. These statutes and regulations require, among other things, that household goods carriers operate in a responsible manner in the public interest; procure, continue in effect, and maintain on file adequate proof of public liability/property damage, cargo, and workers' compensation insurance; and observe rules and regulations governing the acknowledgement and handling of claims for loss and damage, issuing of estimates, execution and issuance of documents, training and supervision of employees, maintenance of equipment and facilities, and rules pertaining to payment of regulatory fees, rates, and charges. The California Public Utilities Commission is the primary agency responsible for enforcement of these and other statutes and regulations governing household goods carriers.

2. Understatement of Gross Operating Revenues

The permit of a household goods carrier may be suspended after notice and a hearing if the carrier knowingly and willfully files a false report that understates gross operating revenues. (Public Utilities Code section 5285².) Any person who transacts business with the Commission agrees to comply with the laws of the State of California, maintain the respect due to the Commission, and never to mislead the Commission or its staff by an artifice or false statement of law. (Commission Rules of Practice and Procedure, Rule 1.) Household goods carriers are required to file quarterly gross operating revenue reports, and pay a fee of one-half of 1 percent of gross operating revenue. (Sections 5003.1 and 5003.2(c).) Household goods carriers also are required to pay a business license fee of one-tenth of one percent of gross operating revenue. (Section 5328(a).) Gross operating revenue is defined as all revenue derived from the transportation of property within California. (Section 5002.) Staff alleges that Starving

² All further references are to the Public Utilities Code unless otherwise noted.

Students omitted many of its intrastate revenue accounts from the calculation of revenue reported to the Commission in its quarterly reports, for the purpose of under-paying fees. If staff's allegations are true, Starving Students has willfully and intentionally submitted false statements to the Commission of its gross operating revenues in violation of section 5285 and Rule 1. If a household goods carrier is in default of its license fees, the Commission may suspend or revoke the carrier's operating authority pending the payment to the Commission of the correct license fee, estimate the correct license fee from available information, and impose a 25% penalty. (Section 5331(a).) Staff estimates, based on the gross revenue reported on Starving Students state and federal tax returns, that Starving Students owes the Commission \$29,642 for 1998, \$50,397 for 1999 and \$46,522 for 2000 in additional license fees and penalties.

3. Operations During Periods Of Suspension

A household goods carrier is required to have proof of public liability and property damage protection and cargo insurance on file with the Commission while its permit is in effect. (Sections 5161 and 5164, and G.O. 100-M.) After cancellation, suspension, or revocation of a household goods carrier's permit, it is unlawful for the carrier to conduct operations as a carrier. (Section 5286.) It is unlawful for a household goods carrier to fail to comply with any order, decision, rule, regulation, direction, demand, or requirement of the Commission. (Section 5313.) Staff has provided evidence that the Commission's License Section notified Starving Students that its insurance had lapsed (on three occasions) and thus its permit was suspended, and License Section directed the carrier to cease operations. Staff alleges that Starving Students continued to conduct moves during the periods of suspension. If these allegations are true, Starving Students has unlawfully operated without the required insurance in effect and on file and failed to comply with the Commission's direction to cease operations, in violation of sections 5161, 5164, 5286 and 5313. For operating without a valid permit, the Commission may impose a fine of up to \$5,000 per violation per day. (Section 5313.5.)

4. Improper Denial of Claims

A carrier receiving a claim for loss or damage to property shall acknowledge receipt of such claim in writing within 30 days. (Item 92, Paragraph 15, Public Utilities Maximum Rate Tariff 4; General Order 139-B, Rule 2.7.) The carrier, after receipt of such a claim, must either pay the claim, decline to pay, or make a firm compromise offer to the claimant within 60 days. (Ibid.) The 1993 Superior Court injunction against Starving Students required Starving Students to acknowledge or process loss and damage claims in a timely manner. Consumers allege that Starving Students failed to acknowledge the consumer's claim, and failed to pay, decline to pay, or make a settlement offer in a timely manner, in violation of Item 92 and the Superior Court injunction. Violation of the injunction may merit referral of this case to the Los Angeles City Attorney's Office for prosecution.

No claim against a household goods carrier for lost or damaged goods shall be denied solely because the lost or damaged goods were not noted at the time of delivery. (Section 5241.) Consumer declarations state that Starving Students denied claims solely because the lost or damaged goods were not noted in the consumer's shipping documents. The declarations demonstrate that Starving Student's employees required the consumers to sign the shipping documents at the time of delivery. By signing the shipping documents, consumers were in effect forced to state that they had checked the shipment, counted the items, and described all lost or damaged items on the document at the time of delivery. Consumers were not given the opportunity to inspect their goods before signing, and felt pressured by Starving Students' movers to sign immediately without inspecting their goods. Subsequently, consumers discovered lost or damaged goods and filed a claim, but report that Starving Students denied the claim solely because the shipping documents did not note the lost or damaged goods, in violation of section 5241.

The Claim Register obtained by staff indicates that Starving Students may have had a pattern and practice of not properly processing consumer claims for lost or

damaged goods. The documents indicate that Starving Students, in 1999, 2000, and 2001 made unreasonably low settlement offers and then, according to consumers, refused to negotiate, instead indicating to consumers that they should go to court, which calls into question whether Starving Students properly acknowledged and processed the claims. The consumer declarations express frustration that Starving Students made settlement offers that the consumers felt were inadequate, and that Starving Students exhibited a “take-it-or-leave-it” attitude, refused to negotiate, and failed to inspect damaged goods or accept photographs of damaged goods when evaluating the consumer’s claim. If these allegations are true, we will consider whether Starving Students’ conduct violates MAX 4, Item 92, Paragraph 15, by failing to timely acknowledge and process claims.

5. Lost, Stolen, or Damaged Goods

After the issuance of operating authority, the Commission exercises continuing oversight of the carrier's fitness. Public Utilities Code section 5285 authorizes the Commission, upon complaint or on the Commission's own initiative, after notice and opportunity to be heard, to suspend, change, or revoke a permit for failure of the carrier to comply with any of the provisions of the "Household Goods Carriers Act" or with any order, rule, or regulation of the Commission or with any term, condition, or limitation of the permit. Section 5139 gives the Commission power to establish rules for the performance of any service of the character furnished or supplied by household goods carriers. Failure to observe the Commission’s household goods carriers rules is unlawful. (Section 5139.) Section 5135 provides, in part, that the commission may refuse to issue a permit if it is shown that an applicant or partner has committed any act constituting dishonesty or fraud, or committed any act which, committed by a permit holder, would be grounds for suspension or revocation of the permit. CSD staff report that many consumers allege that their belongings were stolen while in the possession of Starving Students and its employees. Of the 58 victims’ declarations obtained by staff, 28 state that their property was stolen by Starving Students’ employees. The declarations obtained by staff demonstrate that Starving Students’ management hired workers whom it knew to

have felony convictions for theft, burglary, etc. If these allegations are true, we will consider suspension or revocation of Starving Students' permit for committing acts of dishonesty or fraud in violation of section 5135.

A carrier must maintain its facilities in such a manner that will provide adequate protection for the consumers' household goods. (G.O. 142.) The consumer declarations demonstrate that Starving Students failed to maintain adequate supervision over its employees and its storage facilities, resulting in theft of consumers' personal belongings from Starving Students' warehouses. If true, these allegations demonstrate that Starving Students' violated G.O. 142 by failing to maintain secure and safe facilities. If Starving Students and its agents or employees have committed acts of dishonesty or fraud, or allowed items to be lost, stolen or damaged due to inadequate supervision of its employees and facilities, we will consider suspension or revocation, pursuant to sections 5285 and 5135.

A carrier must use trained and experienced drivers, helpers, and/or packers in the transportation of household goods. (G.O. 142.) Consumers report that Starving Students' employees appeared out of uniform, untrained, inexperienced, and unqualified to move household goods, resulting in items being damaged by movers who mishandled their items.

6. Unprofessional Conduct

No carrier shall permit any driver, helper, and/or packer to be used in the transportation of any household goods shipment unless such person is trained and experienced in the movement of used household goods. (G.O. 142.) Carriers shall not knowingly permit drivers, helpers, and/or packers to go on duty who are under the influence of alcohol or drugs; employees are prohibited from drinking alcohol while on duty. (Ibid.) General Order 142 was promulgated by the Commission to protect consumers from excessive charges resulting from inexperienced, inefficient crews, and from excessive loss and damages which such crews could cause, and further to protect the crew itself from on-the-job injuries.

CSD staff and the consumer declarations allege that Starving Students' movers exhibited unprofessional conduct by often appearing untrained or intoxicated. Consumers report damaged or lost items resulting from the actions of untrained or intoxicated movers. Consumers also allege being aggressively solicited or intimidated for tips. If true, Starving Students' failure to supervise and manage its employees, by ensuring that its employees are professional, trained and experienced, and not under the influence of alcohol or drugs, constitutes a violation of G.O. 142.

7. Other Violations

Maximum Rate Tariff 4 (MAX 4), Item 128, requires the carrier to properly and timely execute prescribed documents containing specified information so that each is signed by carrier and the consumer prior to commencement of any service. These shipping documents are to contain such information as the scope of service to be provided, the rates and/or charges for those services, information regarding valuation, number and names of drivers and helpers, equipment to be provided, and rights and obligations of the carrier and the consumer. Under Item 128, this "Agreement For Service" is to be provided to the consumer, where possible, no less than three days prior to the date of the move. The Agreement For Service is also to contain a "Not To Exceed Price". All of these provisions are intended to be a further guarantee that the consumer has an opportunity to be fully informed before relinquishing to the carrier their most personal and valuable possessions. Consumers allege that they were not given the "Agreement for Service" three days prior to the date of the move, and that they were not given a "Not To Exceed Price" prior to the move.

MAX 4, Item 108, contains rules governing the issuance of estimates. Item 108 requires that all estimates shall be in writing upon prescribed forms, and shall be based upon visual inspection of the goods to be moved. Item 108 also provides for a maximum allowable charge for estimated shipments. Consumers allege that they were assessed charges without any visual inspection of the goods to be moved and in excess of prices quoted and estimates given. Failure to

observe Commission rules and regulations regarding estimates is unlawful, pursuant to section 5245.

MAX 4, Item 132, requires carriers to properly execute and provide to the consumer a freight bill on prescribed forms, and containing specified information about the shipment, services provided and their rates and charges, units of measurement, helpers and packers, signatures of carrier, and the "Not To Exceed Price". Also required, under this Item and Item 36 of the MAX 4, is a legible record of all starting and ending times for each phase of service: packing, loading, driving, and unloading, and a record of deductions in time, if any.

Staff's report alleges finding numerous freight bills and other shipping documents that failed to meet these requirements.

MAX 4, Item 340, provides that no additional charges shall be made for materials such as dividers, paper, tape and labels; consumers allege that Starving Students charged them for these packing materials.

MAX 4, Item 88 requires that carriers provide consumers with a booklet entitled "Important Information For Persons Moving Household Goods"; consumers allege Starving Students failed to provide them with this booklet.

Pursuant to MAX 4, Item 136, Starving Students "Agreement for Services" must contain three valuation options for lost or damaged goods: Basic Coverage at \$.60 per pound per article (mandated by MAX 4, Item 136 and free to the consumer), Actual Cash Value of the total amount declared, which is the fair market value up to the total value declared (at additional expense to the consumer), and Full Cash Value, which is the replacement value of the item (also at additional expense). Consumers allege that they paid for Actual Cash Value or Full Cash Value valuation options, but that Starving Students did not honor the chosen (and paid for) option but instead limited the consumer to \$.60 per pound per article. Consumers also allege that they were not given the opportunity to review the "Agreement for Services" prior to the move, and thus did not have the opportunity to declare the value of their shipment. Pursuant to MAX 4, Item

136, the protection defaults to Actual Cash Value up to \$20,000 in the event no value is declared. Consumers allege that Starving Students offered only \$.60 per pound per article when no valuation option was selected, instead of Actual Cash Value, in violation of Item 136.

MAX 4, Item 88, prohibits carriers from misrepresenting the scope of services offered to the public. MAX 4, Item 100, requires carriers to give consumers 24-hour notice, by telephone or fax, that there will be delays in pickup or delivery of the consumers' household goods. Consumers allege that they often had to wait hours or days for Starving Students movers to arrive, or had to cancel and make other arrangements because Starving Students never arrived, causing unexpected expenses and loss of time. Staff has presented evidence that Starving Students has a pattern and practice of overbooking scheduled moves that it did not have the capacity to complete, completing only about two-thirds of scheduled moves.

General Order 142 requires that the carrier make a reasonable effort to determine the size of motor vehicle equipment that is appropriate under the circumstances. Consumers allege that Starving Students dispatched vehicles of an inadequate size with full knowledge that a larger vehicle was required, resulting in frustration, delay, and additional costs.

The allegations described in staff's reports and documented in the consumer declarations are serious and could constitute grounds for revocation and/or suspension of the respondent's operating authority and other appropriate sanctions and remedies.

IT IS ORDERED that:

1. An investigation on the Commission's own motion is instituted into the operations and practices of Starving Students, Inc., and its major shareholder Ethan Margalith who owns 100% of the outstanding shares; and the Margalith family, Abigail (sister), Elizabeth (mother) and Sanford (father) (Respondents), who each own a 16 2/3% interest, to determine whether:

- a) Respondents have violated Public Utilities Code sections 5139 and 5245 by failing to observe the Commission rules established for household goods carriers, including the Commission's General Orders and Public Utilities Commission Maximum Rate Tariffs;
- b) Respondents have violated Public Utilities Code sections 5285 and Rule 1 of the Commission's Rules of Practice and Procedure, by willfully and intentionally submitting false statements of Starving Students' gross operating revenues in order to under-pay fees, and whether Respondents' permit should be suspended or revoked pending the payment of the fees owed and a 25% penalty pursuant to Public Utilities Code section 5331(a);
- c) Respondents have violated Public Utilities Code sections 5161, 5164 and General Order 100-M by operating as a household goods carrier without proof of property liability and property damage insurance, and cargo insurance in effect and on file with the Commission;
- d) Respondents have violated Public Utilities Code section 5135.5 by operating as a household goods carrier without evidence of adequate workers compensation insurance on file and in effect with the Commission;
- e) Respondents have violated Public Utilities Code section 5241 by denying consumer claims for lost, stolen or damaged goods solely because the lost, stolen or damaged goods were not noted at the time of delivery;
- f) Respondents have violated Public Utilities Commission Maximum Rate Tariff 4, Item 92, and Commission General Order 139-B, Rule 2.7, by failing to acknowledge and process loss and damage claims in a timely manner;

- g) Respondents have committed any acts constituting dishonesty or fraud, thus violating the conditions under which Respondents were granted a permit pursuant to section 5135, which authorizes the Commission to suspend or revoke the permit pursuant to section 5285;
- h) Respondents have violated Commission General Order 142 by doing any of the following: hiring and employing untrained, inexperienced or intoxicated movers in the movement of household goods; by failing to maintain its storage facilities in such a manner that provides adequate protection from loss, theft or damage of the consumers' household goods; and by failing to make a reasonable effort to determine the size of vehicle that is appropriate in the movement of household goods. In addition, Respondents have failed to adequately supervise their employees in order to prevent employees from soliciting tips through intimidation and coercion;
- i) Respondents have violated Public Utilities Commission Maximum Rate Tariff 4, Item 128, by failing to provide an "Agreement for Service" three days prior to the date pre-scheduled for the consumers' move; and by failing to provide a "Not To Exceed Price";
- j) Respondents have violated Public Utilities Commission Maximum Rate Tariff 4, Item 136, by failing to honor the consumers' chosen valuation options for lost or damaged goods, and by failing to provide Actual Cash Value protection when Starving Students failed to obtain the written declared value of the consumers' goods;
- k) Respondents have violated Public Utilities Commission Maximum Rate Tariff 4, Items 108 and 112, by providing an estimated cost for proposed services that was not in writing and not done after a visual inspection of the goods to be moved;

- l) Respondents have violated Public Utilities Commission Maximum Rate Tariff 4, Item 340, by improperly charging consumers for additional packing materials such as packing tape and paper;
- m) Respondents have violated Public Utilities Commission Maximum Rate Tariff 4, Item 88, by failing to provide consumers with the booklet entitled “Important Information For Persons Moving Household Goods”;
- n) Respondents have violated Public Utilities Commission Maximum Rate Tariff 4, Items 88 and 100 by misrepresenting the capacity to perform moves, and by failing to properly notify consumers of delays or cancellation in pickup or delivery of the consumers’ goods;
- o) Respondents should have fines and penalties assessed pursuant to Article 8 of the Household Goods Carriers Act, Public Utilities Code section 5311 et seq., which authorizes fines of up to \$500 per violation per day of any order, decision, rule, regulation, direction, demand or requirement of the Commission, and fines of up to \$5,000 per violation per day for operating without a valid permit;
- p) Respondents’ permit should be suspended or revoked for knowingly and willfully filing false reports that understate revenues, pursuant to Public Utilities Code section 5285(a);
- q) Respondents’ permit should be suspended or revoked for failing to comply with any provision of the Household Goods Carriers Act, Public Utilities Code section 5101, et seq.; failing to comply with any Commission order, rule or regulation; or failing to comply with any term, condition or limitation of Respondents’ permit, pursuant to Public Utilities Code section 5285(b).

2. A full hearing on the allegations set forth in this OII and any additional information which staff wishes to advance that is related to the issues in the proceeding, shall be held on a date to be set at the Commission's hearing room, 505 Van Ness Avenue, San Francisco, California, 94102.

3. Based on the evidence presented by CSD's Financial Examiner, we find good cause to believe that Starving Students has underpaid regulatory fees for 1998, 1999, and 2000. This proceeding is bifurcated into Phase I, which addresses this issue, and Phase II, which will address the remaining issues. A prehearing conference shall be scheduled in Phase I within 20 days of service of this order for the purpose of setting an expedited schedule for evidentiary hearings solely on the issue of what amount of fees and penalties are owed by Starving Students, if any. An interim decision addressing only Phase I shall be issued on an expedited basis. If it is determined that Starving Students is in default, any unpaid fees and a 25% penalty shall be paid to the Commission no later than 30 days from the effective date of the interim decision. Failure to do so shall result in the immediate suspension of Starving Students' permit pending payment of the fees and penalties, pursuant to Public Utilities Code section 5331.

4. CSD staff shall continue discovery and continue to investigate the operations of Respondents. Any additional information that CSD staff wishes to advance as part of its direct showing in this proceeding shall be provided to the Respondents in advance of any hearings in accordance with the schedule directed by the assigned Administrative Law Judge. CSD staff will be subject to discovery relating only to the specific violations alleged in this order.

5. We expect CSD staff to bring additional evidence of any alleged harmful business practices by Respondents to our attention (e.g., new types of violations). CSD staff may propose to amend the OII to add additional respondents or to raise additional issues. Any such proposal should be presented to the Commission in the form of a motion to amend the OII and should be supported by a CSD staff declaration supporting the additional named respondents and/or proposed amendments.

6. This ordering paragraph suffices for the “preliminary scoping memo” required by Rule 6 (c) of the Commission’s Rules of Practice and Procedure. This proceeding is categorized as an adjudicatory proceeding and will be set for evidentiary hearing. The issues of this proceeding are framed in the above order. This proceeding is bifurcated as described above. A prehearing conference shall be scheduled for the purpose of setting a schedule for Phase II of this proceeding including dates for the exchange of additional written testimony, determining which of the CSD staff’s witnesses will need to testify, and addressing discovery issues. This order, as to categorization of this proceeding, can be appealed under the procedures in Rule 6.4. Any person filing a response to this order instituting investigation shall state in the response any objections to the order regarding the need for hearings, or issues to be considered. However, objections regarding issues to be considered must be confined to jurisdictional issues that could nullify any eventual Commission decision on the merits of the alleged violations, and not on factual assertions that are the subject of evidentiary hearings.

The Executive Director shall cause a copy of this order, staff’s investigative reports, and the consumer declarations to be personally served upon Starving Students’ designated agent for service of process, George Hida, at Starving Students, Inc., 1850 Sawtelle Boulevard, Suite 300, Los Angeles, California 90025.

This order is effective today.

Dated February 7, 2002, at San Francisco, California.

LORETTA M. LYNCH
President
HENRY M. DUQUE
RICHARD A. BILAS
CARL W. WOOD
GEOFFREY F. BROWN
Commissioners